S.B. Sales Tax Revision Petition No. 162/2005

Additional Commissioner,
Commercial Taxes, Rajasthan, Jaipur

Versus

M/s Prema Syntex, Jatia Avenue, 15B, RIICO Industrial Area,
Neemrana, District Alwar – 301705

September 10, 2007

HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. R.B. Mathur for the petitioner-Revenue
Mr. J.N. Sharma for the respondent-assessee

Heard learned counsels.

The present revision petition arises out of the Tax Board order dated 03.01.2005, whereby the Tax Board held that the entry tax under the provisions of Rajasthan Tax on Entry of Goods into Local Areas Act, 1999 could not be imposed on the goods in question imported by the respondent assessee from out of India.

Learned counsel for the respondent-assessee has pointed out

that recently the Division Bench of this Court in the case of ***M/s. Dinesh Pouches Ltd. Vs. State of Rajasthan & Ors.*** reported in **(2007) 27 Sales Tax Today 129 (Raj.)** has held that the Rajasthan Tax on Entry of Goods into Local Areas Act, 1999 itself is ultra vires of Article 301 of the Constitution of India. Therefore, he submits that the present revision petition itself has become infructuous because the very enactment has been declared ultra vires by this court. The Division Bench in the aforesaid case has held as under :-

> *"We are, therefore, of the opinion that the tax on entry of goods into local area having effect of directly impeding the free movement of trade and commerce within the State is not compensatory in nature and falls within the ambit of Article 301 of the Constitution of India. Until it is enacted in terms of provisions of Article 304(b), it cannot be said to fall within the legislative domain of the State Legislature. The restriction under Article 301 of the Constitution has been found to be a constitutional restriction on the right of legislative competence to enact laws in derogation thereof and saving from that clause has been provided under Article 302 to Article 305. When admittedly in the present case requirement of Article 304(b) before enacting a law falling within the domain of Article 301 has not been followed, the impugned Act must be held to be ultra vires to Chapter XIII of the Constitution in consonance with Atiabari's case.*
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> *Accordingly, this petition is allowed. The Rajasthan Tax on Entry of Goods into Local Area Act, 1999 is held to be ultra vires Article 301. The demand raised against petitioner shall not*

be enforceable in case not already paid by the petitioner. However, if any amount is collected by the petitioner from its customer as Entry Tax, the same shall be allowed to be retained by him on proof that the burden of its has not been passed on to buyers, consumers or users. If the burden has been so passed on to such other persons, the same shall be paid by the petitioner to the State Treasury within a month failing which such amount shall be recoverable from him. Likewise, any amount already paid by the petitioner as Entry Tax shall be refunded to him on proof of the fact that burden thereof has not been passed on to users, consumers or buyers of such goods, as the case may be, as aforesaid. The petitioner may lay his claim for refund with required proof before the concerned Assessing Authority under Commercial Taxes Department.

No order as to costs."

In view of the aforesaid decision of the Division Bench of this court, the present revision petition has become infructuous and the same is accordingly dismissed with no order as to costs.

(Dr.VINEET KOTHARI),J.

Pramod
Item No. 56